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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 187

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SUPREME COURT, U.S.

WILLIAM E. BODE, ET AL.,

Appellants,

vs.

EDWARD J. BARRETT, AS SECRETARY OF STATE OF THE STATE OF ILLINOIS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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SUPREME COURT OF THE UNITED STATES

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No. 187

WILLIAM E. BODE, ET AL.,

Plaintiffs-Appellants,

vs.

EDWARD J. BARRETT, AS SECRETARY OF STATE OF THE STATE OF ILLINOIS, ET AL.,

Defendants-Appellees

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

Come now Edward J. Barrett, as Secretary of State of the State of Illinois, Benjamin O. Cooper, as Auditor of Public Accounts of the State of Illinois, and William J. Stratton, as State Treasurer of the State of Illinois, appellees in this cause, and file their statement in opposition to appellants' statement as to jurisdiction and hereby move the Court (1) to dismiss the appeal herein or (2) in the alternative, to affirm the judgment of the Supreme Court of Illinois, from which judgment said appeal is taken. In support of the foregoing appellees specify the following:

The Appeal Herein Is Without Merit There Being No Substantial Federal Question Involved

Appellees urge that the appeal herein is without merit for the reason that the facts in this case and the decision of the Supreme Court of Illinois do not present any substantial federal question requiring review by this Court. The violations of the United States Constitution claimed by appellants may conveniently be divided into three categories which will be discussed separately.

I

The Claimed Unlawful Burden Upon Interstate Commerce

A

There is no party before this Court entitled to challenge the Illinois statute upon the ground that it imposes an unlawful burden upon interstate commerce in violation of Section 8 of Article I of the United States Constitution. Each of the appellants is a resident of Illinois engaged solely in intrastate operations wholly within the confines of Illinois. Hence, appellants are not within the class of interstate vehicle operators as to whom the unconstitutional burden is claimed to exist. Consequently they are not entitled to rely upon the commerce clause in this Court. In *Southern Railway Co.* v. *King*, 217 U. S. 524, this Court said (page 534):

> "It is the settled law of this court that one who would strike down a state statute as violative of the Federal Constitution must bring himself by proper averments and showing within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates as to deprive him of rights protected by the Federal Constitution."

See also, *Missouri, Kansas and Texas Ry.* v. *Cade,* 233 U. S. 642, 648; *Massachusetts* v. *Mellon,* 262 U. S. 447, 488; *Hendrick* v. *Maryland,* 235 U. S. 610, 621; *Clark* v. *Paul Gray, Inc.,* 306 U. S. 583, 595-596.

The Supreme Court of Illinois held that appellants had standing in that Court to challenge the validity of the tax under the commerce clause of the Federal Constitution because an Illinois statute (Ill. Rev. Stat. 1951, Chap. 102, pars. 11-16) permits suits by taxpayers to restrain disbursement of public moneys in connection with the enforcement of a state law alleged to be unconstitutional. The Supreme Court of Illinois then proceeded to a determination on the merits adverse to appellants' contention. However, that form of qualification of a litigant to raise a question of constitutionality in a state court does not serve to give the party a right to raise the constitutional question in this Court. Despite the fact that a state court may pass upon the merits of a constitutional question, the appellant, to be entitled to a review by this Court, must show that he is directly and personally aggrieved by the statute. This the appellants here cannot do. *Tyler* v. *Judges,* 179 U. S. 405, 410; *Smith* v. *Indiana,* 191 U. S. 138; *McCandless* v. *Pratt,* 211 U. S. 437; *Southern Railway Co.* v. *King,* 217 U. S. 524.

A case directly in point is *Miles* v. *Department of Treasury of Indiana,* 209 Ind. 172; 199 N. E. 372 (appeal dismissed 298 U. S. 640), where appellants brought an action as taxpayers on behalf of themselves and others similarly situated to enjoin state officials from paying out state funds for the printing of the Gross Income Tax Act of 1933 on the ground that the statute was violative of both the State and Federal Constitutions. The Supreme Court of Indiana considered the claims of unconstitutionality on the merits and upheld the validity of the Act. In dismissing the appeal this Court said (298 U. S. 640):

"The appeal herein is dismissed upon the ground that the appellants have failed to show any interest entitling them to invoke the protection of the Federal Constitution. *Tyler v. Judges of Court of Registration,* 179 U. S. 405, 406, 407, 410; *Southern Ry. Co.* v. *King,* 217 U. S. 524, 534; *Standard Stock Food Co. v. Wright,* 225 U. S. 540, 550."

B

But aside from the fact appellants are in no position to urge a violation of the commerce clause, we believe it is obvious that, on the merits, their contentions have been denied by this Court in "decisions so precisely applicable alike in facts and in principle as to apply a closure to debate." *Aero-Mayflower Transit Co.* v. *Georgia,* 295 U. S. 285, 289. A reading of the opinion of the Supreme Court of Illinois and the appellants' assignments of errors and jurisdictional statement demonstrates clearly that appellants raise only issues which this court has previously decided adversely to their position. We will refer briefly to a few specific considerations.

First, appellants urge that the imposition of the same taxes upon carriers for hire and private carriers, i.e., persons engaged in carrying their own property, is unlawful. While it is true that a state if it wishes may lawfully tax carriers for hire at rates exceeding those imposed upon private carriers (*Dixie-Ohio Express Co.* v. *State Revenue Commission,* 306 U. S. 72) there is no constitutional requirement that a difference in rate be made between the two classes of carriers. *Eavey Co.* v. *Dept. of Treasury of Indiana,* 216 Ind. 255, 25 N. E. 2d 268; appeal dismissed for want of a substantial federal question, 310 U. S. 611.

Second, appellants contend that an unconstitutional burden is placed upon interstate commerce because the taxes imposed do not take into account or make allowance for the

difference in amount of use of the highways by various carriers and by different classes of carriers. Apparently it is appellants' contention that the amount of motor vehicle taxes must be geared directly to individual highway usage by means of a mileage tax or otherwise. This argument has been considered and uniformly denied by this Court. *Aero-Mayflower Transit Co.* v. *Georgia*, 295 U. S. 285, 289; *Capitol Greyhound Lines* v. *Brice*, 339 U. S. 542, 547.

Third, appellants further argue that the provisions of Section 20 of the Illinois Motor Vehicle Law authorizing reciprocal agreements with other states impose an unlawful burden upon interstate commerce in that vehicles entering Illinois from reciprocal states are not taxed by Illinois whereas those from non-reciprocal states are taxed. Under Section 20 of the Motor Vehicle Law Illinois grants complete reciprocity to residents of other states provided such foreign states grant like privileges to residents of Illinois. It is obvious that the only persons having standing to urge that the imposition of Illinois taxes upon vehicle owners from non-reciprocal states amounts to an unlawful burden upon interstate commerce would be a resident of a state not maintaining reciprocal relations with Illinois. As we have seen, none of the appellants are in this class. Furthermore, even if a vehicle operator from a non-reciprocal state were an appellant in this case in order to prevail he would be required to establish that the Illinois taxes as applied to his interstate operations exceed fair compensation for the privilege of using the Illinois highways. *Capitol Greyhound Lines* v. *Brice*, 339 U. S. 542, 547. Here appellants seek to have the Illinois Act delard unconstitutional merely by pointing to the requirement that non-residents from non-reciprocal states are taxed whereas non-residents from reciprocal states are not taxed without attempting to demonstrate the effect of the tax as applied to particular interstate carriers.

So far as we are aware no court has ever held similar reciprocal legislation to be invalid under the commerce clause. Similar contentions have been denied consistently. *Storaasli* v. *Minnesota*, 283 U. S. 57; *State* v. *Caplan*, 100 Vt. 140, 135 Atl. 705; *Lillard* v. *Melton*, 103 S. C. 10, 87 S. E. 421; *State* v. *Lawrence*, 108 Miss. 291, 66 So. 745; *City of Newport* v. *Merkel Bros.*, 156 Ky. 580, 161 S. W. 549; *Ex-Parte Schuler*, 167 Cal. 282, 139 Pac. 685; *Ft. Smith* v. *Scruggs*, 70 Ark. 549, 69 S. W. 679.

We submit (1) that appellants have no standing to urge in this Court that the taxes imposed by Illinois constitute an unlawful burden upon interstate commerce in violation of Section 1 of Article 8 of the Federal Constitution and (2) that, on the merits, appellants' contentions are foreclosed by prior decisions of this Court and hence present no question of substance requiring review of this Court.

II

The Claimed Violation of Section 10 of Article I of the United States Constitution

Appellants contended in the court below that Section 20 of the Motor Vehicle Law authorizing the Secretary of State to enter into reciprocal agreements with other states is violative of Section 10 of Article I of the United States Constitution which provides in part:

> "No State shall, without the Consent of the Congress, . . . enter into any Agreement or Compact with another State . . ."

We believe the frivolous nature of this contention is demonstrated by the opinion of the Supreme Court of Illinois wherein that court cited and relied upon *Dixie Wholesale Grocery Co.* v. *Martin*, 278 Ky. 705, 129 S. W. 2d 181 (Cert. den. 308 U. S. 609). See also, *Virginia* v. *Tennessee*,

148 U. S. 503, 519; *St. Louis & San Francisco Railway Co.* v. *James*, 161 U. S. 545, 562.

We feel certain this Court is aware of the fact that the great majority of states in the United States have enacted reciprocal legislation similar to the Illinois Act containing authorizations to their administrative officers to enter into reciprocal agreements with representatives of other states. So far as we have been able to ascertain no court has ever held such reciprocal legislation or the reciprocal agreements entered into pursuant thereto to be violative of the United States Constitution. On the contrary, this Court has considered motor vehicle acts containing reciprocal provisions similar to that of Illinois, and although the constitutionality of the reciprocal provisions was not specifically raised by the parties, this Court, with the law before it containing such provisions, upheld the validity of the entire Act. See *Hendrick* v. *Maryland*, 235 U. S. 610, 620-21. Also this Court has commented favorably with respect to such reciprocal legislation in *Kane* v. *New Jersey*, 242 U. S. 160, 168:

> "Such a provision promotes the convenience of owners and prevents the relative hardship of having to pay the full registration fee for a brief use of the highways. It has become common in state legislation; and New Jersey has embodied it in her law since the trial of this case in the lower court."

III

The Claimed Violation of the Fourteenth Amendment

Appellants' assignments of error numbers 9, 10 and 13 are predicated upon a claimed violation of the Fourteenth Amendment. We submit that a mere reading of these assignments of error in the light of the opinion of the Supreme Court of Illinois demonstrates the frivolous

nature of the issues raised. The opinion of the Supreme Court of Illinois makes it apparent (1) that the taxes imposed by the 1951 amendment to the Motor Vehicle Law, when combined with motor fuel taxes, no more than equalize the taxes paid per ton-mile by truck, bus and trailer operators with those paid with respect to passenger cars and that such taxes have not been shown by appellants to exceed the fair value of the privilege granted, i. e., unlimited use of the Illinois highways; (2) that the exemption provisions of the law are fair and reasonable and of the type sustained by numerous decisions of this Court; and (3) that the law does not contain provisions so vague and indefinite as to amount to a delegation of legislative authority or a violation of the Fourteenth Amendment. In arriving at its decision the Supreme Court of Illinois cited and relied upon numerous decisions of this Court which conclusively establish that appellants' assignments of error under the Fourteenth Amendment are wholly lacking in merit and present no issue necessitating consideration by this Court.

Conclusion

WHEREFORE, we urge that this Court grant the aforesaid motion to affirm the opinion of the Supreme Court of Illinois or, in the alternative, to dismiss the appeal herein for the reason that no substantial federal question is presented requiring review by this Court.

Respectfully submitted,

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